

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SALLY BOLAND

APPELLANT,

SHERRI LYNN HARPER

APPELLANT,

DAVID C. GANN

APPELLANT,

**JENNIRAE LITTRELL, NATURAL
DAUGHTER OF DECEDENT
CLARENCE BAILEY WARNER**

APPELLANT,

**HELEN PITTMAN, NATURAL
SISTER OF DECEDENT SHIRLEY R.
ELLER**

APPELLANT,

**v.
SAINT LUKE'S HEALTH SYSTEM,
INC. AND SAINT LUKES HOSPITAL
OF CHILLICOTHE F/K/A THE
GRAND RIVER HEALTH SYSTEM
CORPORATION D/B/A HEDRICK
MEDICAL CENTER AND
COMMUNITY HEALTH GROUP**

RESPONDENTS.

DOCKET NUMBER WD75364 Consolidated with WD75366, WD75367, WD75484 and
WD75485

DATE: November 26, 2013

Appeal From:

Livingston County Circuit Court
The Honorable Thomas N. Chapman, Judge
The Honorable Jason A. Kanoy, Judge

Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Attorneys:

J. Kent Emison and Brett A. Emison, Lexington, MO and Michael W. Manners, Independence, MO, for appellants.

Thomas W. Wagstaff, Christopher L. Schnieders and Adam S. Davis, Kansas City, MO and Sean T. McGrevey, Overland Park, KS, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Livingston County

Before Division Two: Thomas H. Newton, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

This consolidated appeal arises from five separate wrongful death actions filed against the same three corporate defendants. Appellants allege that a respiratory therapist administered an intentionally lethal overdose of medication that resulted in each of the five deaths and that the Respondents intentionally and fraudulently concealed the therapist's actions.

The question on appeal is whether there is error by the trial court in granting Respondents' motions to dismiss on the pleadings based on the expiration of the three-year statute of limitations contained in the Wrongful Death Act.

REVERSED AND REMANDED

Division Two holds:

(1) Accrual and tolling are distinct concepts. Accrual is defined as the point in time when the right to bring an action arises. Tolling provisions interrupt the running of a statute of limitations in certain circumstances.

(2) Accrual is not defined within the Wrongful Death Act and, thus, is open to interpretation by the courts. Our Supreme Court has mandated that the Wrongful Death Act not be strictly construed.

(3) In this case, Appellants have asserted allegations amounting to fraudulent concealment so as to delay the accrual of the statute of limitations.

(4) The limitation set forth in the Wrongful Death Act does not accrue until Appellants could, by reasonable diligence, ascertain that they had a cause of action.

Opinion by Gary D. Witt, Judge

November 26, 2013

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